

# SALES AGREEMENT

Ariat International, Inc. ("Ariat"), whose principal place of business is 3242 Whipple Road, Union City, CA 94587, and the person or entity, which has executed the attached Credit Application ("Purchaser" or "Dealer") AGREE AS FOLLOWS:

- 1. TERM.** This Agreement shall take effect upon Purchaser's signature below and acceptance below by Ariat, and shall continue in effect until terminated as provided herein.
- 2. PURCHASE AND SALE.**

Subject to the terms and conditions of this Agreement, Ariat agrees, upon Purchaser's approved written purchase order, to sell Ariat-branded footwear, apparel and accessories (individually each a "Product" and collectively, the "Products") to the Purchaser, and Purchaser agrees to purchase such Products from Ariat in the quantities and at the prices agreed to on a Product by Product basis. Purchaser will submit all orders for Products on the Ariat purchase order form in effect from time to time. All such orders will be subject to acceptance by Ariat. Ariat may change the design, specification or any other details of any Products and may discontinue any Product lines, at any time in its sole and absolute discretion, and without notice or liability to Purchaser. Purchaser acknowledges that the terms and conditions of any purchase order or other business form of Purchaser shall not in any way supersede, modify, alter or amend the terms and conditions of this Agreement, and that to the extent there are any inconsistencies between any purchase order or other business form of Purchaser and this Agreement, this Agreement shall govern.
- 3. PRICE AND DELIVERY, PAYMENT TERMS, VENDORS, DELIVERY, AND CHANGES.**

**3.1 Price and Delivery.** All prices are F.O.B. Ariat's designated domestic. Any applicable freight, costs and insurance charges, shall be separately set forth on the invoice. Ariat shall have the right to adjust prices if market conditions or prices of materials so warrant, at Ariat's sole and absolute discretion. Purchaser shall additionally provide Ariat with a current resale certificate, appropriate resale certificate numbers and other documentation satisfactory to the applicable taxing authority to substantiate any claim of exemption, and pay any excise, sales, use, property, value added taxes or any other taxes or charges not based on Ariat's net income. Purchaser shall be solely responsible for any sales, excise, use, property or other tax or assessment levied by any domestic or foreign governmental authority (including any federal, provincial, state, municipal or county governmental authority) in connection with any sale of Products to Purchaser or otherwise arising out of or in connection with any transactions under this Agreement other than taxes based upon the net income of Ariat. Purchaser acknowledges that all scheduled delivery dates are estimated, and that Ariat shall not be liable for any damages alleged to be as a result of delays in delivery for any reason. Ariat is entitled to make partial shipments of an order as such become available for shipments. Dealer's sole remedy in the event Ariat is unable to fill any accepted order shall be to cancel the order by giving written notice to Ariat prior to such order being shipped. Payment is due from Buyer with respect to such partial shipment as set forth in Section 3.2 below. Partial shipment of an order does not relieve Buyer of its obligations to accept future shipments in satisfaction of such order. Should Ariat terminate the Agreement, all orders for Product or Products shall be cancelled and Ariat will have no obligation to deliver.

**3.2 Payment Terms.** Payment terms are net 30 (thirty) days from date of invoice, unless otherwise provided in a specific invoice. No deduction from invoice is permitted, and the full amount of each invoice is fully due and payable in accordance with its terms. All overdue amounts shall bear interest at the rate of 1.5% per month, or the maximum rate permitted by applicable law, whichever is less, until paid in full, as further set forth in the Terms and Conditions herein below. Notwithstanding the foregoing, Ariat reserves the right at any time and for any reason to cease extending credit to Purchaser and to ship Products pursuant to this Agreement only on a cash on delivery ("C.O.D.") basis.

**3.3 Purchase Money Security Interest.** Purchaser expressly agrees to and hereby grants Ariat a purchase money security interest in each Product or shipment of Products sold by Ariat and in any proceeds Purchaser receives from resale thereof (including accounts receivable), until payment in full of the purchase price of such Product or Products together with related charges is received by Ariat. Purchaser further agrees to execute financing statements and other documents as Ariat requests in connection with such security interest, and Purchaser acknowledges that this document constitutes a proper security agreement to be used in connection with any such financing statement.

**3.4 Changes.** Purchaser may not make changes to submitted purchase orders without the written consent of Ariat which may be withheld at Ariat's sole and absolute discretion. To the extent that such changes affect the cost or the time required for Ariat's performance pursuant to a purchase order, or affects any other provision of such purchase order, Ariat reserves the right to adjust the price, delivery schedule, and/or other provisions as may be affected in its sole and absolute discretion.
- 4. CANCELLATION.**

Purchaser may cancel all or part of any purchase order by notifying Ariat in writing fifteen (15) days prior to the delivery of affected Products, provided however that Purchaser agrees to pay or indemnify Ariat for any costs, expenses, damages and reasonable loss of profits resulting from such cancellation(s) as determined by Ariat, including without limitation by purchasing all resulting unused, unreturnable or obsolete material, components and work-in-progress ("WIP"), including but not limited to, completed Products.
- 5. No Warranty; Acceptance or Rejection of Products.**

Purchaser acknowledges and agrees that there are no representations, warranties or conditions of any nature or kind, whether direct, indirect, express, implied, statutory, or otherwise, relating to the Products or their fitness for any purpose, and Ariat shall have no liability in connection therewith. Purchaser must accept any and all Products unless through no fault of Dealer such Products are defective or do not conform to the underlying purchase order(s). Products shall be deemed accepted unless Purchaser notifies Ariat within ten (10) days after delivery of Purchaser's intent to reject such Products for defectiveness or failure to conform to the purchase order, and Purchaser shall state with particularity the reason for such rejection. Rejected Products shall be promptly returned to Ariat freight paid upon receipt of a Return Materials Authorization ("RMA") from Ariat.
- 6. Force Majeure.**

Ariat may delay its performance hereunder without any liability to Purchaser because of events beyond Ariat's reasonable control, including without limitation natural catastrophes, shortage or unavailability of materials, government action or inaction, strike or labor force problems, fire or other casualty, unusually severe weather or the like.
- 7. Termination.**

This Agreement may be terminated (a) at any time upon mutual written agreement of the parties; (b) for any reason by Purchaser, upon thirty (30) days written notice to Ariat; (c) for any reason by Ariat, upon ten (10) days written notice to Purchaser; (d) by Ariat, immediately upon written notice to Purchaser of a material breach by Purchaser of any of Purchaser's obligations under this Agreement (including but not limited to the diversion of any Products by Purchaser to any unauthorized party or market); or (e) by Purchaser, on written notice to Ariat of a material breach by Ariat of any of Ariat's obligations under this Agreement, provided that Purchaser shall grant to Ariat an opportunity to cure such breach within thirty (30) days. This Agreement may also be terminated by a party on immediate written notice to the other party if such other party is insolvent, or fails to provide adequate assurance of future performance promptly upon reasonable request, or files bankruptcy, or makes any arrangement with its creditors generally, or has a receiver appointed for all or a substantial part of its business or properties, or if such other party goes into liquidation or otherwise ceases to function as a going concern. Upon termination of this Agreement for any reason whatsoever, (a) all amounts then owing to Ariat, whether or not then due, shall accelerate and become immediately due and payable in full and any shipments after termination may be C.O.D. at Ariat's option, (b) any outstanding purchase orders may be cancelled in whole or in part at Ariat's option, and Purchaser shall have the obligation to indemnify Ariat as provided in Section 4 hereof, and (c) the provisions of this Agreement shall continue to apply to all of Purchaser's outstanding purchase orders that have been accepted and are not cancelled by Ariat pursuant to this Section.
- 8. Limitation of Ariat's Liability.**

In no event shall Ariat's liability to Purchaser exceed the amount actually paid by Purchaser to Ariat pursuant to the relevant purchase order relating to which a claim regarding any Product(s) has arisen.
- 9. Liquidated Damages:** Purchaser and Ariat agree that damages caused by Purchaser's diverting Product or Products to unauthorized third parties will cause irreparable harm to Ariat. Purchaser further acknowledges that damages from diversion are difficult to calculate and therefore agrees herein to be subject to liquidated damages, not as a penalty, in the amount of three times the retail price of all the Product and Products contained in a relevant purchase order in which any Product(s) covered thereunder were diverted. Purchaser's liability hereunder related to one purchase order may not be deemed to alter, modify, or alleviate the liability Purchaser may have on other purchase orders covering other Product(s) that were also diverted.
- 10. Minimum Advertised Price Policy.** Ariat has built a strong reputation and following among consumers, and has determined that it shall not support through advertising or promotional materials, cooperative advertising or otherwise, materials or policies that have the effect of diminishing or detracting from the perceived value of Ariat Products. Therefore, Ariat requires that dealers adhere to a MAP Policy to preserve its strong reputation for providing customers with high value products and strong after-

sales support. The MAP Policy is included in the Relevant Documents, and may be amended from time to time by Ariat in its sole and absolute discretion.

**11. NOTICE.** Any notice or other communication hereunder shall be in writing and shall be deemed given and effective (i) when delivered personally, by fax (and confirmed by regular mail), or by overnight express, or (ii) three (3) days after the postmark date if mailed by certified or registered mail, postage prepaid, return receipt requested, addressed to a party at its address stated below its signature hereto or to such other address as such party may designate by written notice to the other party in accordance with the provisions of this Section.

**12. MISCELLANEOUS.**

**12.1 Entire Agreement; Amendment; No Assignment; Construction.** References to "Agreement" herein shall be deemed to refer to all Relevant Documents as defined in the Dealer Agreement. This Agreement constitutes the entire agreement between the parties hereto relating to the subject matter hereof and supersedes all prior oral and written and all contemporaneous oral negotiations, commitments and understandings of the parties. Except as expressly provided herein, this Agreement may not be changed or amended except by a writing executed by both parties hereto. Ariat may assign this Agreement, but the Purchaser may not assign this Agreement without the prior written consent of Ariat which may be withheld at Ariat's sole and absolute discretion. Purchaser agrees that this Agreement shall be construed in a neutral manner, as though jointly drafted by both parties.

**12.2 Governing Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the United States and the State of California as applied to agreements entered into and to be performed entirely within the State of California between California residents. Purchaser hereby submits to the jurisdiction of the state and federal courts located in Alameda California, and agrees that any suit by Purchaser shall be commenced in one of such courts.

**12.3 Attorneys' Fees.** If any legal action is brought relating to the enforcement or interpretation of this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees.

**12.4 Severability.** If any provision of this Agreement shall be held invalid or unenforceable, such provision shall be modified to render it valid and enforceable while to the fullest extent possible preserving the economic effect of the original provision, and remainder of this Agreement will remain in full force and effect.

**12.5 Independent Contractors.** The parties are independent contractors, and nothing contained herein is intended to or shall be construed as constituting any party the agent of the other for any purpose whatsoever or as establishing any joint venture or partnership between the parties hereto.

## TERMS AND CONDITIONS

**CREDIT APPROVAL:** Acceptance of all orders is subject to final approval by the Credit Department of Ariat International, Inc. (Ariat). Ariat credit approval will be based in part on Purchaser's acceptance of the following terms and conditions.

**SHIPPING TERMS:** F.O.B. Ariat's designated domestic distribution centers. Purchaser assumes all insurance and delivery risks of loss or damage at F.O.B. point as provided by common law. The responsibility of determining shipping instructions is that of the Purchaser. Ariat is not a transportation expert and, if Purchaser wishes Ariat to determine best shipping instructions, Ariat agrees to exercise only reasonable care and diligence and cannot be held responsible to determine the lowest cost alternative in all cases. If Purchaser has specific Routing Instructions, these must be provided in writing, in their entirety and up-to-date, to Ariat before any order can be shipped. Ariat will not be held responsible for complying with, or be held liable for penalty charges levied by Purchaser in conjunction with, changes to Purchaser's standard Routing Instructions unless these are received by Ariat in their entirety, in writing, prior to shipment.

**BACK ORDERS:** Back orders may be cancelled by Ariat in accordance with a customer's cancellation date.

**PAYMENTS:** Checks should be made payable to Ariat International, Inc., and should be mailed to **PO Box 201282 Dallas, TX 75320**. The applicable date for payment is the date that Ariat receives payment. Ariat will consider a payment as received on the due date if it is postmarked on or before the due date and is received by Ariat at the above address no later than 10 days following the due date.

**PAST DUE ACCOUNTS:** Invoices not paid within 30 days of the due date will be subject to an interest charge of 1.5% per month, but not to exceed the maximum amount permitted by applicable state law. This charge will be levied each month until all overdue balances are paid. Purchaser hereby agrees to pay to Ariat any such service charges and lost discounts regardless of any purchase order or policy that Purchaser may have to the contrary. Amounts withheld as a result of disputes will not be levied service charges to the extent disputed amounts are resolved in favor of Purchaser. Disputed amounts resolved in Ariat's behalf and all other unauthorized overdue balances would be levied service charges.

**COST OF COLLECTION:** If Purchaser fails to pay any amount when due, including service charges and lost discounts, Purchaser agrees to pay the full amount of any costs or expense, including reasonable attorney's fees incurred by Ariat in the collection of such overdue amounts by litigation or otherwise. All orders from Purchaser to Ariat shall be governed by and construed in accordance with the laws of the State of California, applicable to contracts made and to be performed in the State. Purchaser consents to the jurisdiction of the Legal Courts of the State of California over any dispute between Purchaser and Ariat and agrees that service of process in any proceeding in such Courts may be made upon Purchaser and Purchaser waives any claim that either California or Alameda County is said State is an inconvenient location or that service made in said manner is not sufficient.

**OTHER TERMS AND CONDITIONS:** The terms specified herein and/or on the Ariat order form and/or invoice are the only terms under which Ariat will sell its merchandise. Ariat does not agree to different terms and conditions stipulated on Purchaser's purchase order or similar documents, correspondence, or statements of policies, unless an agreement is reached, in writing, signed by a duly authorized officer or the controller of Ariat International, Inc., stipulating Ariat's acceptance of such terms and conditions. Ariat's terms and conditions shall control if they conflict with any provisions contained in a customer's purchase order.

**TIMELY NOTIFICATION:** No shipping or delivery claims will be accepted unless made within ten (10) days after receipt of merchandise. All Purchaser claims resulting from incorrect invoicing must be submitted to Ariat in writing within thirty (30) days of invoice date or Purchaser agrees to accept invoice as billed. Ariat will not make adjustments of claims submitted after thirty (30) days from invoice date.

**RETURN OF MERCHANDISE:** No merchandise may be returned to Ariat without prior authorization from Ariat in the form of a Return Authorization Number. Unauthorized or collect shipments will not be accepted. Purchaser agrees to pay return freight and/or reasonable storage charges for merchandise returned without proper authorization regardless of the merits of the return. Liability for loss or damage shall rest on Purchaser until such return is duly authorized and accepted by Ariat. Authorized returns of non-defective merchandise will be credited against the Purchaser's account at original purchase price or at Ariat's published prices for discontinued or closeout product, less a 10% restocking charge. The foregoing terms are in addition to, and may not be deemed to alter, modify or amend any of the terms and provisions of Section 5 herein above.

**AUTHORITY OF PARTIES:** No soliciting agent, sales representative, or employee of Ariat shall have the power to waive any of the terms or provisions hereof, or to incur additional obligations, or to make additional representations or warranties on behalf of Ariat, unless same are evidenced by an agreement, in writing, signed by a duly authorized officer or the controller of Ariat. Signer for Purchaser represents that he is a duly authorized agent for the Purchaser, empowered to sign this document, and that the information supplied on this Credit Application is true and accurate.

**SECURITY:** Ariat hereby retains and Purchaser hereby grants to Ariat a security interest in all goods described on Purchaser's or Ariat's order form and purchased hereunder, which shall continue until Purchaser shall have paid Ariat the full amount due hereunder.

**CREDIT AGREEMENT: On behalf of Purchaser and myself individually, I declare Purchaser's and my willingness to abide by Ariat's terms of payment. On behalf of Purchaser and myself individually, I also agree that for late payments I will pay the interest charge of 1.5% per month of the total amount past due (or the maximum amount allowed under applicable law) and should a default in payment occur, I and/or Purchaser will pay all reasonable collection costs, attorney fees and court expenses. If a suit is instituted due to nonpayment, I on behalf of Purchaser and myself individually, understand that California will be recognized as having venue and jurisdiction. Information provided on this form is given for the purpose of obtaining credit, and is warranted to be true. Ariat is authorized to contact the references on this application and verify my company's and my own personal credit and financial history and experiences.**

Accepted By Owner / Officer	
Signature	Date
Print Name	Title